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June 20, 2007

Via Facsimile (360) 738-2532

David S. McEachran
Whatcom County Prosecuting Attorney
331 Grand Avenue, Suite 201
Bellingham, WA 98225

**Re: Whatcom County v. Washington State Liquor Control Board
Whatcom County Superior Court Cause No. 07-2-01312-8**

Dear Mr. McEachran:

I am writing to follow up the voice mail messages I left you yesterday, regarding the above referenced matter. I had hoped to speak with you before tomorrow's deadline for the Liquor Board to file an Answer to Whatcom County's Petition for Review. Unfortunately we have been unable to connect.

The Board intends to issue a new order reconsidering the portions of its May 4, 2007 order which referenced WAC 314-09-010 (2) (a) and RCW 34.05.530 (2) and found Whatcom County was not entitled to an administrative hearing to state its objections to the Board's determination to issue Liquor License No. 400779 to the Nooksack Indian Tribe for the Northwood Crossing Casino and not entitled to seek judicial review of the Board's Order.

WAC 314-09-010 (2) (a) states that a governmental entity "in which the premises is located" may request an adjudicative hearing on its objections to licensure and the Board may in its discretion grant a hearing. The Board intends to reconsider its May 4, 2007 Order to conclude that Whatcom County does have some measure of authority over the trust land on which the licensed premises will be located; therefore, granting the County's request for an adjudicative proceeding before an administrative law judge appears the appropriate mechanism for a full discussion and objective third party review of the scope and nature of the County's objections to the license. The Board does not intend to reconsider its initial determination that the license be granted.

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At an administrative hearing the Board's Licensing Division will be represented by an Assistant Attorney General who will defend the determination to issue the license. The County would be given party status and the opportunity to present whatever evidence and argument it deems necessary. The Tribe will also be a party to the administrative proceeding and will be given the opportunity to present evidence at the hearing.

At the conclusion of the hearing, the Administrative Law Judge will draft Proposed Findings and Conclusions, the parties will have the opportunity to file exceptions to the Proposed Findings and Conclusions and the Board will issue a final order affirming, reversing or modifying the Proposed Order. The County and the Tribe would have the right to request Superior Court review of any adverse portions of the Board's Final Order.

I would like to have your agreement to proceed in an administrative hearing, rather than to continue the existing Superior Court action. Procedurally, it makes sense to me that the County dismisses its Petition, without prejudice to refile if necessary or desired after a Final Board Order is issued upon completion of the administrative hearing. I have spoken with Ms. Masse the attorney for the Tribe and she does not object to proceeding in an administrative hearing.

If we are not able to connect this afternoon, I plan to file the Board's Answer to your Petition for Review tomorrow, June 21, in order to satisfy the 20 day deadline. I am attaching a copy of the Answer I intend to file. As you will see, the Answer preserves the Board's position that the County's interests were not required to be considered by the Board when issuing the Order, thus, the County does not have standing and the Court does not have subject matter jurisdiction under the portion of the Administrative Procedure Act governing review of agency orders entered in adjudicative proceedings. I realize this position is inconsistent with the Board's intent to issue an order granting the County's request for an administrative hearing, but I trust you understand my need to preserve all legal issues on behalf of my client. If we are able to reach agreement prior to the deadline for filing and service of the Answer, I will not file the Answer I have prepared.

Even if we are not able to reach agreement to terminate the existing Superior Court action, the Board intends to issue a new order reconsidering the May 4, 2007 on the grounds described above and directing that the matter proceed to administrative hearing. I believe that new Board order would render the existing Superior Court action moot and I would move to dismiss it on those grounds.

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Please contact me at your earliest convenience so that we can discuss this matter. Thank you in advance for your courtesy and I look forward to speaking with you.

Sincerely,

MARTHA P. LANTZ
Assistant Attorney General

MPL:dse

cc: Members of the Liquor Control Board
Christine Masse, Attorney for Nooksack Tribe